CF0000057777

2

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 341 OF 1990

APPELLANT (In jail) :- Aatmaram S/o Asharam, C-aste Sahu, aged about 22 years resident of Beergahan, P.S. Arjunda District Durg, Madhya Pradesh.

VERSUS

RESPONDENT :- The State of M-adhya Pradesh through Police Thana Arjunda, District Durg, M.P.

APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE 1973

2408

....2.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No 341 / 1990, सन् 200

26

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23.06.2006

Shri F.S. Khare, counsel for the appellant.

Shri Arun Sao, Govt. Advocate for State.

This criminal appeal is heard finally today.

The appellant was convicted under Section 376 IPC vide judgment dated 19.3.1990 delivered in sessions trial No. 49/1989 by 1st Addl. Sessions Judge, Distt. Durg and was sentenced to R.I. for 7 years. The appellant was acquitted of the charge under Section 363 and 366 IPC.

The learned trial Judge held that the prosecutrix was in love with the appellant and had eloped with the appellant intending to marry him. It was also held that the prosecutrix had consented to cohabit with the appellant since she was deeply in love with the appellant. However, since the learned trial Judge held that the prosecutrix was a girl aged below 16 years of age, the appellant was convicted under Section 376 IPC and was sentenced as aforesaid.

The only point that requires consideration in this appeal is whether the prosecutrix was under 16 years of age on the date of occurrence.

Radiological examination of Archana, the prosecutrix was conducted by Dr. G.N. Tiwari D.W. 1 for estimation of her age.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

27

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, this witness who was not examined by the prosecution was examined as a defence witness and stated that upon ossification test, he estimated the age of the prosecutrix to be 16 years. It is well settled that in the estimation of age through the test of ossification, the legally permissible margin of error is 2 to 3 years on either side. In this view of the matter, it cannot be ruled out that the prosecutrix was aged 18 years or more on the date of occurrence. This also finds corroboration from the evidence of Dr. Chaya Tiwari P.W. 11 who found that the prosecutrix was a fully developed woman with all 28 teeth having grown. Besides this, the testimony of Urmila P.W. 8 aged 40 years and the mother of the prosecutrix clearly shows that the prosecutrix was above 18 years of age on the date of occurrence since she stated that she was married to one Sadaram while she was aged 20 years and the prosecutrix was born a year after her marriage. In this view of the matter, it cannot be ruled out that the prosecutrix was 18 years or more on the date of occurrence. It is also pertinent to note that although the prosecution has filed a copy of Kotwari register Ex.P-10 for proof of date of birth of the prosecutrix, yet it shows the name of the child born to Sadaram as Anita and not as Archana. Nowhere in F.I.R. lodged by

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 341/90 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Roop Sagar or in her statement under Section 161 Cr.P.C it was stated that the prosecutrix was also called Anita. In view of the above facts and circumstances, the possibility that the prosecutrix was aged 18 years or more on the date of occurrence cannot be ruled out. The testimony of the prosecutrix leaves no room for any doubt that she was deeply in love with the appellant and had freely and voluntarily consented to the sexual intercourse by the appellant with her.

Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that conviction of the appellant under Section 376 IPC and the sentence awarded by the learned trial Judge deserves to be set aside.

In the result, the appeal is allowed. Conviction of the appellant under Section 376 IPC and the sentence awarded thereunder by the learned trial Judge are set aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya
Anjali

[पीछे देखिये